

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	Civil Action No. _____
v.)	
)	Judge _____
Robert Dwight Weed, Jr. ,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

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_____)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), simultaneous with the filing of this Consent Decree, has filed a complaint in this matter pursuant to Section § 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of costs incurred and to be incurred in responding to the release or threatened release of hazardous substances at the Durako Paint Site in Detroit, Wayne County, Michigan (“the Site”).

B. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs

incurred at the Site. Based upon this Financial Information, the United States has determined that the Settling Defendant is able to pay the amounts specified in Section VI.

D. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and his heirs, successors and assigns. Any change in or transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Financial Information" shall mean those financial documents reviewed by the Government.
- h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each

year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendant.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred at or in connection with the Site prior to the date of entry of this Consent Decree, plus accrued Interest on all such costs through the date of entry of this Consent Decree.

l. "Plaintiff" shall mean the United States.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Settling Defendant" shall mean Robert Dwight Weed, Jr.

o. "Site" shall mean the Durako Paint Superfund Site consisting of two properties located approximately 250 feet apart, on opposite sides of Filer Street, and located at 6315 East 7 Mile Road, Detroit, Wayne County Michigan. The properties are generally depicted on the map included in Appendix A.

p. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to address his alleged liability for the response costs incurred at the Site, as provided in the Covenant Not to Sue by Plaintiff in Section VIII, subject to the

Reservations of Rights by Plaintiff in Section IX.

VI. PAYMENT OF PAST RESPONSE COSTS

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the United States \$30,000.00 (thirty thousand dollars) as reimbursement for the response costs incurred by the United States in connection with the Durako Paint Site prior to the date of entry of this Consent Decree.

6. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the USAO File Number assigned to this case, EPA Region 5 and DOJ Case Number 90-11-3-07511. Payment shall be made in accordance with instructions to be provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney’s Office in the Eastern District of Michigan following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions) and to:

Anthony Audia
Financial Management Officer
U.S. Environmental Protection Agency – Region 5
Mail Code MFS-10J
77 West Jackson Blvd.
Chicago, IL 60604

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund.

Settling Defendant shall send notice that payment has been made in accordance with Paragraph 6 above, and the payment shall be deposited in accordance with Paragraph 8 above.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If Settling Defendant fails to make payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

A. If any amount due under Paragraph 5 is not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$100.00 (one hundred dollars) per violation per day that such payment is late.

B. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency – Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, EPA Region 5, USAO File Number assigned to this case, and DOJ Case Number 90-11-3-07511.

C. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XIII (Notices and Submissions) and to:

Anthony Audia
Financial Management Officer
U.S. Environmental Protection Agency -- Region 5
Mail Code MFS-10J
77 West Jackson Blvd.
Chicago, IL 60604

D. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment

11. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

14. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Past Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of his obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to the United States by Settling Defendant. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 21 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

IX. APPLICABILITY TO PRIOR JUDGEMENT

15. The Settling Defendant shall continue to make monthly restitution payments through October 2004 subject to the terms and conditions of this Court's Sentencing Order of October 27, 1999 pertaining to United States District Court Case Number CR- 99-80445-01. The Settling Defendant will not have an obligation to pay any restitution outstanding at the expiration of the

Settling Defendant's probationary period, so long as, he has fully complied with this Consent Decree.

X. RESERVATION OF RIGHTS BY UNITED STATES

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Section VIII Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

A. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

B. liability for response costs not included in the definition of Past Response Costs;

C. liability for future response actions at the Site.

D. criminal liability;

E. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

F. Claims relating to the Site that arise after the date of lodging of this Consent Decree; and

G. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

17. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent

Decree, if, within 10 years of the entry of this Consent Decree, the United States determines that the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 26, is false or, in an material respect, inaccurate as of the date of entry of this consent decree.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT

18. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

A. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

B. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

C. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. Except as provided in Paragraph 21 (Waiver of Claims) and Paragraph 25 (regarding various defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16, but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Settling Defendant agrees not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 21, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs. The “matters addressed” in this Consent Decree do not

include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

24. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section XI.

26. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has submitted to the United States Financial Information that fairly,

accurately, and materially sets forth his **financial** circumstances, and that those circumstances have not materially changed between the **time the Financial Information** was submitted to the United States and the time Settling Defendant executes this Consent Decree.

XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07511)
P.O. Box 7611
Washington, D.C. 20044-7611

Sherry Estes
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Settling Defendant:

Robert Dwight Weed, Jr
1649 Villa Road
Birmingham, MI 48009

XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

29 This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

32. Each undersigned representative of Settling Defendant to this Consent Decree and the Deputy Chief, Environmental Enforcement Section of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

34. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 200 ____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v Robert Dwight Weed, Jr., relating to the civil liability for past response costs incurred by the United States at the Durako Paint Superfund Site.

FOR THE UNITED STATES OF AMERICA

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division

KIMBERLY BLEILER
Trial Attorney
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611
202-305-0258 (phone)
202-616-6584 (fax)

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v Robert Dwight Weed, Jr., relating to the civil liability for past response costs incurred by the United States at the Durako Paint Superfund Site.

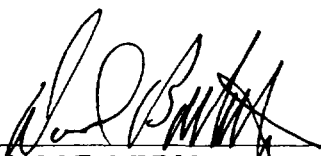
JEFFREY COLLINS
United States Attorney
Eastern District of Michigan

Assistant United States Attorney
Suite 2300
211 West Fort Street
Detroit, MI 48226
(313) 226-9100/3800 (FAX)

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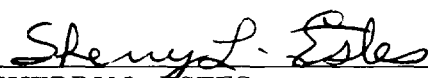
Date:

7/4/03


for WILLIAM E. MUNO
Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Date:

7/10/03

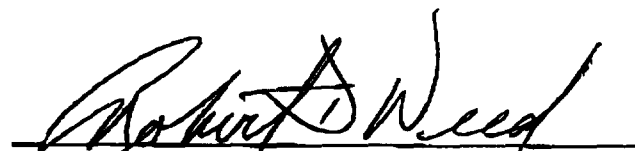

SHERRY L. ESTES
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v Robert Dwight Weed, Jr., relating to the civil liability for past response costs incurred by the United States at the Durako Paint Superfund Site.

FOR DEFENDANT

Date:

4/29/03

A handwritten signature in black ink, appearing to read "Robert D. Weed", written over a horizontal line.

Robert Dwight Weed, Jr.
1649 Villa Road
Birmingham, MI 48009

Itemized Cost Summary
DURAKO PAINT, DETROIT, MI SITE ID = B5 10
Cumulative Costs Through 06/30/2003.

REGIONAL PAYROLL COSTS	\$37,880.04
EPA INDIRECT COSTS	\$373,370.57
REGIONAL TRAVEL COSTS	\$1,229.70
EMERGENCY REMOVAL CLEANUP (ERC) CONTRACT	
ENVIRONMENTAL QUALITY MANAGEMENT, INC. (68-S3-5001)	\$844,573.48
ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT	
DYNAMAC CORPORATION (68-W4-0015)	\$4,039.39
INTERAGENCY AGREEMENT (IAG)	
DEPARTMENT OF TRANSPORTATION (DW69947686)	\$18,533.30
SUPERFUND TECH. ASSISTANCE & RESPONSE TEAM (START)	
ECOLOGY & ENVIRONMENT (68-W6-0011)	\$53,043.18
Total Site Costs:	\$1,332,669.66